



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

FEB 16 2007

200719018

Uniform Issue List: 403.04-00  
403.05-00

T:EP:RA'T3

Legend

Taxpayer A =

Taxpayer B =

Amount C =

Annuity X =

IRA X =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Company M =

Company N =

Company O =

State W =

Court X =

Dear :

This is in response to your letter, as supplemented by letters dated , and

in which you request a waiver of the 60-day rollover requirement contained in section 403(c)(8) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request:

Taxpayer A, whose date of birth was Date died a resident of State W on Date without having attained age 70 ½. Prior to his death, Taxpayer A had owned an annuity described in Code section 403(b) with Company M. By means of a beneficiary designation dated on or about Date Taxpayer A named Taxpayer B, his wife, as the primary beneficiary of his interest in Annuity X. Taxpayer B, whose date of birth was Date survived Taxpayer A.

On or about Date Taxpayer A decided to withdraw Amount C from his Annuity X. Amount C was transferred into an account (non-tax qualified) with Company N four days later on Date The next day, Date Taxpayer A was admitted into a Veteran's Administration ("VA") Hospital. Taxpayer A was subsequently discharged from the VA Hospital but readmitted to same on Date Taxpayer A died on Date which was within 60 days of Date

On Date which was outside the 60-day rollover period applicable to Taxpayer A's Date distribution from his Annuity X, Taxpayer B, his surviving spouse, transferred Amount C into IRA X, an IRA set up with Company O in the name of Taxpayer A (Deceased).

The documentation submitted in conjunction with this ruling request includes a copy of the Letters Testamentary issued by Court X, asserted to be a court of competent jurisdiction, which provides that Taxpayer B was named the personal representative of the Estate of Taxpayer A. It has also been represented that, as personal representative, Taxpayer B had the authority to complete the rollover transaction referenced above.

The documentation submitted with this ruling request also contains an affidavit signed by Taxpayer B in which she indicated that, prior to his death, Taxpayer A advised her that he wished Amount C to be returned to Company M to be placed back into his Annuity X. However, as noted above, Taxpayer A was hospitalized and unable to complete the intended rollover. Furthermore, the affidavit indicates that Company M would not permit Taxpayer B to complete the intended rollover.

Based on the facts and representations, you request that the Service treat Taxpayer B's Date "rollover" of Amount C into IRA X created with Company N as a valid rollover within the meaning of section 403(c)(8) of the Code.

With respect to your ruling request, section 403(b)(1)(E) of the Code ("flush" language) provides, in relevant part, that any amount distributed out of an annuity contract described in section 403(b)(1) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, in the manner provided under section 72 of the Code (relating to annuities).

Code section 403(b)(8)(A) provides that if any portion of the balance to the credit of an employee in a 403(b) annuity contract is paid to him in an eligible rollover distribution (within the meaning of section 402(c)(4)), and the employee transfers any portion of the distribution to an eligible retirement plan described in section 402(c)(8)(B), then the distribution to the extent transferred shall not be includible in gross income for the taxable year in which it was distributed.

Section 403(b)(8)(B), in relevant part, provides (and provided) that rules similar to the rules of paragraphs (2) through (7) and (9) of section 402(c) shall apply for purposes of section 403(b)(8)(A).

Section 402(c) of the Code provides rules governing rollovers of amounts from exempt trusts to eligible retirement plans including IRAs.

Code section 402(c)(3)(A) provides that, except as provided in subparagraph (B), paragraph (1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Section 402(c)(3)(B) of the Code provides that the Secretary may waive the 60-day requirement under section 402(c)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 402(c)(4) of the Code defines "eligible rollover distribution". Excepted from the definition of "eligible rollover distribution" is any distribution required under Code section 401(a)(9).

Section 402(c)(8) defines an eligible retirement plan for purposes of subsection (c) as including an IRA described under section 408(a).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3)(B), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The documentation presented by Taxpayer B demonstrates that Taxpayer A did not roll over the Date \_\_, \_\_\_\_ distribution into either Annuity X or an IRA because of his hospitalization and his Date \_\_, \_\_\_\_ death which hospitalization began one day after Date 5, 2005 and which death occurred within the 60-day rollover period applicable to the Date 5, 2005 distribution. Taxpayer B, Taxpayer A's spouse and the personal representative of his estate, did roll over the Date 5, 2005, Annuity X distribution into IRA X in order to effectuate Taxpayer A's intent. However, said rollover occurred outside the applicable 60-day rollover period.

Based on the above, and subject to the restrictions noted below, the Service hereby concludes that Taxpayer B's action, taken as surviving spouse and acting within the scope of her authority as personal representative of Taxpayer A's estate, a position to which she was appointed, whereby she contributed the check representing proceeds of Annuity X into IRA X set up in the name of Taxpayer A is deemed to have complied with the requirements of Code section 403(c)(8) and is deemed to constitute a valid rollover contribution pursuant to said Code section.

This ruling does not authorize the rollover of amounts that either were or are required to be distributed by section 401(a)(9) of the Code (made applicable to IRAs under section 408(a)(6) of the Code), if any.

In this case, Taxpayer B established an IRA in the name of Taxpayer A after the death of Taxpayer A. Irrespective of whether Taxpayer B named a beneficiary of said IRA, the IRA into which Amount C was rolled over does not have a designated beneficiary as that term is defined in Code section 401(a)(9). Thus, the Code section 401(a)(9) distribution period with respect to the rollover IRA referenced above is that applicable to an individual who died before attaining his required beginning date without having designated a beneficiary thereof.

The Service also notes that Taxpayer A had not named a beneficiary of the IRA created in his name posthumously on Date . Therefore, since Taxpayer B is not the named beneficiary of said IRA, pursuant to the guidelines of Code section 408(d)(3) and the "Final" Regulations promulgated under section 1.408-8, she is not eligible to treat said IRA as her own.

Furthermore, this ruling letter assumes that Taxpayer B's action in contributing the above-referenced Amount C into an IRA set up in Taxpayer A's name with Company N was in accordance with the laws of State W and taken pursuant to her authority as personal representative of Taxpayer A's estate, as represented.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

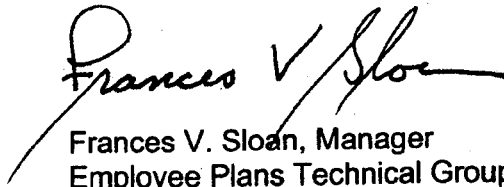
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

200719018

If you wish to inquire about this ruling, please contact \_\_\_\_\_, Esquire  
(I.D. # \_\_\_\_\_), at (202) \_\_\_\_\_. Please address all  
correspondence to SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose